IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

OP.No. 34485 of 2000(E)

PETITIONER:

M/S.MAYILVAHANAM MARKETING,
SHORNUR-2, REPRESENTED BY
C.G.ABRAHAM, MANAGING PARTNER.

BY ADV. SRI.K.B.MUHAMED KUTTY

RESPONDENTS:
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1. THE ADDITIONAL SALES TAX OFFICER,
   OTTAPPALAM.

2. THE ADDITIONAL APPELLATE ASSISTANT COMMISSIONER,
   COMMERCIAL TAXES, PALAKKAD.

3. DEPUTY TAHSILDAR (R.R.),
   TALUK OFFICE, OTTAPPALAM.

BY SR.GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/07/2007, ALONG WITH TRC NO. 297 OF 2000 & CONNECTED CASES, THE COURT ON 10.07/2007 DELIVERED THE FOLLOWING:

O.P.NO.34485 OF 2000-E

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ASSESSMENT ORDER FOR 93-94 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER CATED 29.9.1998.

EXT.P2 TRUE COPY OF THE ASSESSMENT ORDER FOR 94-95 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DT.20.3.1999.

EXT.P3 TRUE COPY OF THE ASSESSMENT ORDER FOR 95-96 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DT.15.3.2000.

EXT.P4 TRUE COPY OF THE COMMON APPELLATE ORDER FOR 93094 TO 95-96 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DT.22.11.2000.

EXT.P5 TRUE COPY OF THE DEMAND NOTICE IN FORM NO.1 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DT.20.11.2000 (93-94)

EXT.P6 TRUE COPY OF THE DEMAND NOTICE IN FORM NO.10 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DT.20.11.2000 (93-94)

EXT.P7 TRUE COPY OF THE DEMAND NOTICE IN FORM NO.1 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DT.20.11.2000 (94-95)

EXT.P8 TRUE COPY OF THE DEMAND NOTICE IN FORM NO.10 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DT.20.11.2000 (94-95)

EXT.P9 TRUE COPY OF THE DEMAND NOTICE IN FORM NO.1 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER DT.20.11.2000 (95-96)

EXT.P10 TRUE COPY OF THE DEMAND NOTICE IN FORM NO.10 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER DT.20.11.2000 (95-96)

/ TRUE COPY /

H.L. DATTU, C.J. & K.T. SANKARAN, J.

O.P. Nos. 34485 of 2000-E, 1178 of 2001-M,
T.R.C. Nos. 297, 352 & 353 of 2000
and
368 of 2002

Dated this, the 10th day of July, 2007.

JUDGMENT

H.L. DATTU, C.J.

The common question in all these Writ Petitions and Tax Revision Cases is, whether the dealer who purchases P.V.C. pipes in circumstances in which no Sales Tax was charged under Section 5, is liable to pay tax on the said purchase price under Section 5A of the Act, because the sale of PVC pipes is exempt from payment of Sales Tax by virtue of a notification issued by the State Government in exercise of its power under Section 10 of the Act, in G.O. No. 499/1990.

(2) The learned counsel for the Revenue, Sri. Mohammed Rafiq submitted that the legal issues involved in these petitions are no more debatable in view of two decisions of this Court in The Deputy Commissioner of Sales Tax (Law) v. Supreme Boards, Pappinissery, Cannanore {(1998) 6 KTR 374 (Ker.)} and Deputy Commissioner of Sales Tax (Law) v. C.T. Kochouseph {(2005) 13 KTR 58 (Ker.)}.

(3) In Supreme Boards' case (supra), this Court has held:

> "Resin is a taxable commodity at the point of first sale in the State. Because of the circumstances being a newly set up small scale undertaking, the first seller was not liable to pay tax. But the purchaser, who is not entitled to the benefit of the above exemption notification, is liable to pay purchase tax under Section 5A, as admittedly, he was using the same for the purpose

mentioned in clause (a) of Section 5A(1) of the Act."

(4) In Re. C.T. Kochouseph (supra), a Division Bench of this Court has observed:

> "The respondent dealer purchased voltage stabilizers from charitable institutions and S.S.I. Units exempted from payment of sales tax under notifications issued under section 10 of the KGST Act. He sold substantial portion of such purchases locally and also despatched a portion of such purchases to outside State as stock transfer to branches supported by valid F form declarations and other evidences. The item voltage stabilizers was a single point commodity taxable at the point of first sale in the State by a dealer liable to tax under Section 5 of the Act. Whether the turnover of voltage stabilizers purchased by him from registered dealers, who are S.S.I. Units exempted from payment of sales tax by notification issued under Section 10 of the Act, are liable to tax under Section 5A of the Act when they despatch the goods outside State either by way of stock transfer or by consignment sales.
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> The validity of Section 5A was upheld by the Court in Malabar Fruit Products Co.'s case {(1972) 30 STC 537} and affirmed by the Division Bench in Yusuf Shabeer's case {(1973) 32 STC 359}. The Supreme Court in Kandaswami's case {(1975) 36 STC 191} had specifically approved the view taken by the Court in the above two decisions. In the light of the authoritative decision of the Supreme Court upholding Section 5A of the Act, judicial discipline demands that the said decision has to be followed. Even if the Supreme Court did not consider some other possible contentions in arriving at the decision, the High Court cannot bypass or ignore the binding decision of the Supreme Court on the ground that the Supreme Court did not consider some other available grounds.
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> The circumstance that small-scale industrial units were exempted from payment of sales tax in respect of their sale is a circumstance falling under Section 5A of the KGST Act and consequently the levy of purchase tax under Section 5A in respect of the purchases effected by the dealer-assessee from the small-scale industrial units

> exempted from payment of sales tax and despatched to outside State by way of transfer or for consignment sales was in order.
>
> The purchase of the goods manufactured by a small-scale industrial unit which is exempted from tax under Government Notification and its subsequent disposal either within the State or outside the State by the dealer attracts Section 5A provided the conditions specified in clauses (a) to (c) are satisfied. In this view of the matter, there is no discrimination between goods sold in the State or despatched to outside the State either by way of stock transfer or for consignment sales."

(5) The factual matrix and the legal issues raised and canvassed in all these petitions are:- The petitioners are dealers registered under Kerala General Sales Tax Act and Central Sales Tax Act. They purchase goods from SSI units which enjoy the benefit of sales tax exemption granted by the State Government by its exemption notification No. 499/1990 and effect both intra and inter state sales. They are now fastened with purchase tax liability under Section 5A of the Act by the Sales Tax authorities. Their grievance and the primary issue is that the burden of levy of tax under the Act need not be on them having exempted the SSI units from payment of sales tax under the Act by issuing an exemption notification under Section 10 of the Act. This issue has been considered by this Court in the aforesaid two decisions. However, the learned Senior Counsel, Dr. K.B. Mohammed Kutty, Mr. Pathrose Mathai and Sri. Sukumar reiterate the same submissions and take us through several decisions of the Apex Court and also this Court in aid of their submissions.

(6) In our considered opinion, the legal issues raised in these petitions

once again need not be considered by us, though at the time of hearing, it was repeatedly said by Dr. Mohammed Kutty that the said Section has been challenged from different angles in the Petitions. In our view, in view of the observations made by this Court in the aforesaid decisions, the issues raised and argued by the learned Senior Counsel need not be considered once again by us, since we really feel, if it is done, the same is nothing but waste of precious time of this Court.

(7) We are in agreement with the opinion expressed by this Court in the aforesaid decisions. Therefore, the issues raised requires to be answered against the assessees and in favour of the Revenue.

(8) Before parting with the cases, we intend to remind ourselves and the learned members of the Bar, that the law of precedents is that, a decision of a Division Bench of a High Court given in an earlier case is binding on a subsequent Bench of the same High Court. A High Court is bound to follow the decision of the same High Court in order to maintain uniformity, judicial decorum and continuity of law. The binding effect of a decision does not depend upon whether a particular argument was considered therein or not provided that the point with reference to which a particular argument was consequently advanced was actually decided. As observed by the Supreme Court in Sundardas Kanyalal Bhatija {(1990) 183 ITR 130}, one must remember that the pursuit of the law, however glamorous it is, has its own limitations on the Bench. In a multi-Judge Court, the Judges are bound by the precedents and procedures. They could use their discretion only when there is

no declared principle to be found, no rule and no authority.

(9) On Law of Precedents, it is time and again noticed by the Apex Court in several decisions, that the precedents cease to be binding if it is reversed or over-ruled by a higher court; when it is affirmed or reversed on a different ground; when it is inconsistent with the earlier decisions of the same rank; when it is sub-silentio; and when it is rendered per curium. Such a situation does not exist in these cases.

(10) In our view, the aforesaid view of the Apex Court requires to be strictly followed by this Court, otherwise, precious public time is wasted, which time otherwise could be spent in hearing the long pending cases.

(11) Accordingly, following the observations made by this Court in the aforesaid two decisions, the questions of law raised and argued requires to be answered in the negative and against the assessee.

All the pending stay petitions are dismissed.

Ordered accordingly.

H.L. DATTU
Chief Justice

K.T.SANKARAN
Judge

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